the court to make an award on this item solely on hypothetical grounds. For these reasons the claim for loss of earnings is dismissed without prejudice.

As regards the claim by the plaintiff for special damages for loss of bicycle, cost of transport for his wife and children while he was in hospital and cost of extra nourishing food it is my view that these have not been proved. In *Lee Sau Kong* v. *Leow Cheng Chiang*[3] the Court of Appeal quoted with approval the judgment of Lord Goddard in *Bonham-Carter* v. *Hyde Park Hotel, Ltd.*[4] as follows: —

"Plaintiffs must understand that if they bring actions for damages it is for them to prove their damages; it is not enough to write down the particulars, and, so to speak, throw them at the head of the Court, saying: 'This is what I have lost; I ask you to give me these damages.' They have to prove it."

Under the circumstances I make the following awards in favour of the plaintiff: —

(a) $12,000 general damages;

(b) $130 being loss of one month's salary;

(c) Interest at 6% per annum on (a) and (b) from date of filing of Writ to date of satisfaction.

(d) Costs.

Order accordingly.

Solicitors: *John Ang & Co.; Richard Talalla & Co.*

OOI HO CHENG v. GRACE JOSEPH & ORS.

[A.C.J. (Syed Agil Barakbah J.) September 25, 1974]
[Alor Star — Civil Appeal No. 9 of 1974]

Landlord and Tenant — Doctrine of equitable estoppel — Whether applicable — No expectation held out to tenant.

In this case the appellant had been allowed to occupy a portion of land to erect a house thereon. The appellant bought a house already built on the land and carried out repairs to it. One of the clauses in the agreement provided that if the owner required the land for his own purposes and gave the tenant three months' notice, the tenant would remove the said house. The respondents became the co-owners of the property on the death of their father, the original owner and they brought an action for possession of the land. It was argued that there was an irrevocable licence coupled with a grant in this case but the learned President of the Sessions Court held that it was not the intention of the parties to make the tenancy irrevocable and he gave judgment for possession. The appellant appealed.

Held: there was clear evidence in this case that the tenant was allowed to remain on the land only for so long as the landlord felt disposed to allow him to remain and that thereafter he had to remove the house at his own cost and without compensation at any time the landlord required the said land for his own use by giving the tenant three months' notice in writing. In the circumstances therefore the doctrine of equitable estoppel could not apply and the learned President of the Sessions Court was correct in giving judgment for possession in favour of the landlords.

Cases referred to:-

(1) *Ooi Ai Seng* v. *Chan Lin Lam* [1973] 2 M.L.J. 20.

(2) *Wee Kang Whye & Anor.* v. *Lee Woon Tong* [1974] 1 M.L.J. 7.

(3) *Siew Soon Wah & Ors.* v. *Yong Tong Hong* [1973] 1 M.L.J. 133.

(4) *In re King's Leasehold Estates* (1873) L.R. 16 Eq. 521.

CIVIL APPEAL.

Ooi Gin Sun for the appellant.

E. Mayandi for the respondents.

Syed Agil Barakbah J.: This is an appeal against the decision of the President, Sessions Court, Alor Star, given on 3rd September, 1973, against the appellant, the defendant in the court below. He gave judgment for the respondents/plaintiffs and ordered the appellant/defendant to vacate the land in dispute within one month from the date of judgment.

The four grounds of appeal involve a point of law which relates to the question whether the equitable doctrine of an irrevocable licence coupled with a grant has arisen in this case. The learned President held that it has not arisen on the ground that it was never the intention of the parties to make the tenancy irrevocable as clearly indicated by clause 3 of the written agreement executed between the parties. (Ex. P2).

The simple facts of the case are that the respondents/plaintiffs are the co-owners of the land in dispute. They derived their title to the said land on the death of their father, S.J. David, the predecessor in title. During the lifetime of Mr. David, sometime on 1st December, 1960, the appellant/defendant executed an agreement with him in which the appellant/defendant was allowed to occupy an area of 30 feet by 60 feet of the said land in order to erect a house at his own cost. In fact, the appellant/defendant bought a house which was already on that land belonging to the previous owner and carried out certain repairs to it amounting to about $2,500 with the permission of Mr. David. The house is a double-storey building with cement floor and plank walls, about 20 feet by 80 feet in size and valued between $3,000 and $4,000. The appellant/defendant has been occupying that house as tenant and paying rent regularly for the last fifteen years or so until the receipt of notice to vacate served on him by the respondents/plaintiffs. The material clause in the agreement that requires consideration is clause 3 which states as follows: —

"3. The First Party shall cause the Second Party to remove the said house at his own cost and without any compensation at anytime the First Party requires the said land for his own use by giving the Second Party Notice in writing 3 (Three) months ahead and the Second Party shall remove the said house in such cases of the First Party's own use without claiming any damage or compensation."

Mr. Ooi Gin Sun for the appellant/defendant submitted that on the basis of the principle propounded by the Federal Court in *Ooi Ai Seng* v. *Chan Lin Lam*[1] and the various authorities cited therein, the principle of equity or equitable estoppel has arisen in favour of the appellant/defendant on the ground that the house situated on the land in dispute is not a temporary building but a permanent one erected for the purpose of a residence for the appellant/defendant. With respect to the learned counsel, I do not agree. I am of the view that the doctrine of equitable estoppel applies only when the tenant has been led to expend money on the land under an expectation created or encouraged by the landlord that the tenant will as a result of that expenditure be able to remain there. In order that equity can intervene, there must be evidence of inducement or encouragement by the land-

lord or some expectation held out by him to the tenant on the strength of which the tenant expended money on the land. (See *Wee Kang Whye & Anor.* v. *Lee Woon Tong*,[2] per Choor Singh J., which I accept with respect). That is the general principle. In *Ooi Ai Seng's* case, *supra*, Azmi L.P. (as he then was) dealt with two aspects of the application of this principle. The first is whether there was clear evidence upon which the court would hold that the landlord had agreed to let the tenant remain on the land for so long as the tenant would feel disposed to remain on it. In *Siew Soon Wah & Ors.* v. *Yong Tong Hong*[3] the tenancy agreement stated that the tenancy shall be permanent. The Privy Council held that —

"the intention clearly was that the landlord should let the premises to the respondent for as long as the period as it was within his power to do so, that he should not be able to eject the respondent so long as he paid the stipulated rent and that the respondent should be entitled to occupy the property so long as he wished and so long as he paid the rent."

In *In re King's Lease-hold Estates*[4] there was a verbal agreement between the landlord and tenant that the former should let the tenant remain in the premises for such term of years not exceeding the landlord's terms as the tenant might desire to be the tenant. It was held by the Privy Council that the tenant has a right to remain as such and retain possession as long as the landlord's interest exists.

Secondly, where there is no such clear evidence the facts and circumstances and in particular the subject-matter of the dispute must be looked into. In *Ooi Ai Seng's* case, *supra*, the very nature of the construction which was a wooden shed built of corrugated iron roof, wooden posts and wire mesh walls suggest that the duration of such tenancy is of a temporary nature. The Federal Court held that an equity or equitable estoppel does not arise in favour of the tenant. This principle was followed by Choor Singh J. in *Wee Kang Whye's* case, *supra*, which also involved a temporary structure. It was held that the plaintiffs had granted the defendant a temporary gratuitous licence which they were entitled to revoke at will and the plaintiffs were therefore entitled to an order of possession against the defendant.

In the present case although the house in question cannot be said to be of a temporary nature, I am of the opinion that there is clear evidence arising from clause 3 of the agreement that the tenant can remain on the land only for so long as the landlord would feel disposed to allow him to remain there. Thereafter he has to remove the said house at his own cost and without compensation *at any time* the landlord requires the said land for his own use by giving the tenant three months' notice in writing. This clause is further strengthened by clause 4 of the agreement which states, *inter alia*, that in case of subletting, etc., of the said house by the tenant with the permission and consent of the landlord, the new occupier is subject to the same terms set out in clause 3. In other words, it is envisaged and understood by both parties at the time of the execution of the said agreement that the respondents/plaintiffs may serve three months' notice on the appellant/defendant in cases where the respondents/plaintiffs require the land for their own use. In this particular instance, it has been adduced in evidence that the respondents/plaintiffs, four of whom are government servants, wanted the land back in order to erect houses of their own after obtaining loans from the government for the purpose. Obviously they require the land back for their own use and considering that the appellant/defendant has been occupying the land for the last fifteen years their request is reasonable. Thus, even though the appellant/defendant has spent some money in repairing the house, in the circumstances of the case it is clear no expectation was created or encouraged by the landlord that raises an equity in his favour such as to enable him to remain there for so long as he likes.

I have no alternative but to dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Ooi Gin Sun & Co.; Jayadeva & Zahir.*

MOHAMAD BIN SENIK v. NIK MEK BINTI HAJI NIK DER & ORS.

[F.C. (Suffian L.P., Ali and Wan Suleiman F.JJ.) December 13, 1974]

[Kota Bharu — Federal Court Civil Appeal No. 90 of 1971]

Land Law — Kelantan — Land Settlement — Power of District Officer to make order relating to possession of land — Registration of person in possession — Possessory title — Kelantan Land Settlement Ordinance, 1955, ss. 5, 7, 8 and 10.

The Kelantan Land Settlement Ordinance gives power to the District Officer to inquire and decide who is in possession of land and to make an order to that effect. Thereupon the Registrar will enter the person in possession on the register and give him a copy of the registration known as a document of possessory title. In this case the appellant had applied for orders to declare certain orders made by the District Officer to be null and void and for an order for the lands to be registered in his name as administrator of the estate of the deceased proprietor. The High Court dismissed the application and the appellant appealed to the Federal Court.

Held, allowing the appeal: the orders were made without jurisdiction, as the District Officer had made no finding that the persons in whose favour the orders were made were in actual possession of the lands at the time of the enquiry.

Case referred to:-

(1) *Mamat* v. *Mahmood* [1961] M.L.J. 167.

The following cases were also cited in argument: *Mat'Ail* [1961] M.L.J. 15; *Fatimah binti Wok* [1964] M.L.J. 318, 319; *Anismic* [1969] 1 All E.R. 208, 233.

FEDERAL COURT.

A. Wilson for the appellant.

First respondent absent.

Second & third respondents in person.

Suffian L.P. (delivering the judgment of the Court): The plaintiff, Mohamed bin Senik, was born in 1938 in Kampong Weng, Thailand. His father was Senik bin Sulong (whom we shall call the deceased) and his mother, Halimah. His mother died when he was 45 days old. His father at that time had another wife, Bidah, and after his mother's death Bidah looked after him. About ten years before his death the deceased divorced Bidah and married Nik Mek, the first defendant. The deceased died on 18th February, 1950,